



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 15, 1994

Mr. Robert P. Rose
Assistant City Attorney
P.O. Box 1088
Austin, Texas 78767-8828

OR94-369

Dear Mr. Rose:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 26003.

The City of Austin Police Department (the "department") received a request for information relating to a certain incident of alleged police misconduct. Specifically, the requestor seeks information relating to an incident involving Anthony Hawkins, including a "report from the Internal Affairs Division of the facts with respect to this case"; "the policies and procedures relevant to the police actions that we are complaining of"; "the names of the officers involved in this incident, age, law enforcement background, written responses to the complaint, and the final decision"; and "information regarding the number of pedestrian stops that were conducted in the City of Austin in 1993 where the officers pointed their weapons at the suspect . . . categorized by race, age, and geographical areas within the City of Austin and . . . the police officers . . . identified by race only." You advise us that the department has made or will make some of the requested information available to the requestor. In addition, you advise us that some of the requested information does not exist. *See* Open Records Decision No. 452 (1986) (information not within purview of Open Records Act if it does not exist). You seek to withhold the remainder of the requested information under section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert section 552.101 in conjunction with section 143.089(g) of the Local Government Code. Section 143.089(g) provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer.

The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Recently, in *City of San Antonio v. Texas Attorney Gen.* 851 S.W.2d 946, 949 (Tex. App.-Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by a city police department for its use. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *City of San Antonio*, 851 S.W.2d at 949. The *City of San Antonio* court, however, did not comment on the availability of information contained in the police officer's civil service file. In cases in which a police department takes disciplinary action against a police officer, section 143.089(a)(2) requires that the department transfer "any record, memorandum, or document relating to" the disciplinary action to the city civil service commission. These records may not be withheld under section 552.101 of the Government Code. Open Records Decision No. 562 (1990). See also Local Gov't Code § 143.089(f).

Because you have not submitted the requested internal affairs investigation file to us for review, we are unable to determine whether the internal affairs investigation at issue here resulted in disciplinary action. Accordingly, we are unable to determine the applicability of section 143.089(g) to the information in the requested file. We note, however, that if the investigation did not result in disciplinary action, the file must be withheld from required public disclosure under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. On the other hand, if the internal affairs investigation did result in disciplinary action, then "any record, memorandum, or document relating to" the disciplinary action must be transferred to the civil service commission as required by section 143.089(a)(2) of the Local Government Code and must be released by the civil service commission under section 143.089(f) of the Local Government Code unless some provision of the Open Records Act or other law permits the commission to withhold the documents. Open Records Decision No. 562 (1990) at 6. We also note that the department is required to refer any person who requests information maintained in an officer's personnel file to the civil service commission.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,

A handwritten signature in cursive script, reading "Margaret A. Roll".

Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/GCK/sbm

Ref.: ID# 26003

cc: Mr. Calvin E. Lee
Vice President
Austin Branch NAACP
1704 East 12th Street
Austin, Texas 78702